

AMENDED IN SENATE JULY 24, 2003

AMENDED IN SENATE JUNE 23, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1760

Introduced by Committee on Budget (Oropeza (Chair), Bermudez, Chan, Chu, Diaz, Dutra, Dymally, Goldberg, Hancock, Jackson, Liu, Montanez, Nakano, Pavley, Reyes, Simitian, and Wolk)

March 11, 2003

An act to ~~amend Section 935.7 of, to amend, repeal, and add Section 13957 of, and to add and repeal Section 13964.5 of, the Government Code, and to amend Section 2085.5 of, and to amend, repeal, and add Sections 1001.90 and 1202.4 of the Penal Code, relating to victims of crime, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1760, as amended, Committee on Budget. Victims of crimes.

(1) Existing law provides for the indemnification of victims of specified types of crimes by the California Victim Compensation and Government Claims Board. ~~Existing law authorizes the Department of Transportation to adjust and pay any claim arising out of the activities of the department without the prior approval of the board if the amount paid is \$5,000 or less and either the Director of Finance or Director of Transportation certifies that a sufficient appropriation for the payment of the claim exists. Existing law requires the board, if the Department of Transportation elects not to pay the claim, to process the claim in the same manner as any other claim filed against the state.~~

~~This bill would authorize the department to deny, as well as adjust and pay, any such claim without the prior approval of the board if the amount claimed is \$5,000 or less. The bill would require the department to provide written notice of the rejection of the claim pursuant to existing law if the department elects not to pay any claim.~~

The bill would require the California Victim Compensation and Government Claims Board, in January of each year, until January 1, 2006-2007, to determine whether sufficient funds will be available in the following fiscal year to pay all payments authorized and if the board determines that there will be insufficient funds, the board would be required to determine the percentage necessary to reduce awards and payments, as specified. Payments that would be reduced pursuant to this provision would be deemed to be payment in full of the authorized reimbursement.

(2) Existing law provides that the total award to or on behalf of each victim or derivative victim of a crime may not exceed \$35,000, except that the amount may be increased to \$70,000 if federal funds for that increase are available.

This bill would provide the total aggregate award to a victim and all derivative victims who sustain a loss as a result of the crime against the victim may not exceed this amount, except in the case where a victim is permanently disabled as a direct result of the crime. The bill would provide that a victim who is permanently disabled as a direct result of the crime would be individually eligible for the amount specified in existing law and a separate limit of \$70,000 would apply to the aggregate losses of all derivative victims deriving from that crime. These provisions would remain in effect until their repeal on January 1, 2006-2007, on which date existing law would again become operative.

(3) Existing law requires the court to impose a diversion restitution fee that is commensurate with the seriousness of the offense on a criminal defendant whose case is diverted, as specified. Existing law authorizes the court to waive the diversion restitution fee if there are compelling and extraordinary reasons.

This bill would increase the minimum amount of a diversion restitution fee to not less than \$500-\$300 and not more than \$3,000 \$1,000 if the person is charged with a felony, and not less than \$250 \$150 and not more than \$1,000 if the person is charged with a misdemeanor. The bill would provide that a defendants ability to pay may be considered in imposing a fine in excess of the statutory



minimum. The bill would authorize a court to impose a restitution fine that is less than the statutory minimum if it finds that a defendant is unable to pay the statutory minimum. The bill would also prohibit a court from staying the restitution fee after it is imposed. These provisions would remain in effect until their repeal on January 1, 2006 2007, on which date existing law would again become operative.

(4) *Existing law requires the Director of Corrections to deduct a minimum of 20% or the balance owing on the fine amount, whichever is less, up to a maximum of 50% from the wages and trust account deposits of a prisoner who owes a restitution fine and requires that this amount, unless prohibited by federal law, be transferred to the California Victim Compensation and Government Claims Board for deposit in the Restitution Fund in the State Treasury. Existing law also requires the director to deduct and retain from a prisoner's wages and trust account deposits or from any moneys collected from a parolee, an administrative fee that totals 10% of the amount transferred to the board pursuant to specified provisions, unless prohibited by federal law.*

This bill would decrease the maximum deduction from a prisoner's wages and trust account deposits to 30% and would decrease the administrative fee for prisoners or parolees to 5%.

(5) The Restitution Fund is continuously appropriated to the Victim Compensation and Government Claims Board for the purpose of indemnifying victims of crime.

This bill would make an appropriation by increasing the fees deposited in the Restitution Fund that are subject to continuous appropriation.

~~(5)~~

(6) The bill would require the Administrative Office of the Courts to establish a workgroup composed of a specified membership to review the current policies and processes by which criminal fines and penalties are imposed by the courts. The bill would require the workgroup to report its findings and recommendations to the Legislature no later than February 1, 2004.

~~(6)~~

(7) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.



The people of the State of California do enact as follows:

~~SECTION 1. Section 935.7 of the Government Code is amended to read:~~

~~935.7. (a) Notwithstanding Section 935.6, the Department of Transportation may deny or adjust and pay any claim arising out of the activities of the department without the prior approval of the California Victim Compensation and Government Claims Board if both of the following conditions exist:~~

~~(1) The amount claimed is five thousand dollars (\$5,000) or less;~~

~~(2) The Director of Finance or the Director of Transportation certifies that a sufficient appropriation for the payment of the claim exists.~~

~~(b) If the department elects not to pay any claim, the department shall provide the notice required by Section 913.~~

~~(c) Any person who submits any claim arising out of any activity of the Department of Transportation shall comply with every other applicable provision of this part relating to claims against state agencies.~~

~~SEC. 2.—~~

~~SECTION 1. Section 13957 of the Government Code is amended to read:~~

~~13957. (a) The board may grant for pecuniary loss, when the board determines it will best aid the person seeking compensation, as follows:~~

~~(1) Subject to the limitations set forth in Section 13957.2, reimburse the amount of medical or medical-related expenses incurred by the victim, including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.~~

~~(2) Subject to the limitations set forth in Section 13957.2, reimburse the amount of outpatient psychiatric, psychological, or other mental health counseling related expenses incurred by the victim or derivative victim, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code, and including family psychiatric, psychological, or mental health counseling for the successful treatment of the victim provided to family members of the victim in the presence of the~~

1 victim, whether or not the family member relationship existed at
2 the time of the crime, that became necessary as a direct result of
3 the crime, subject to the following conditions:

4 (A) The following persons may be reimbursed for the expense
5 of their outpatient mental health counseling in an amount not to
6 exceed ten thousand dollars (\$10,000):

7 (i) A victim.

8 (ii) A derivative victim who is the surviving parent, sibling,
9 child, spouse, fiancé, or fiancée of a victim of a crime that directly
10 resulted in the death of the victim.

11 (iii) A derivative victim, as described in paragraphs (1) to (4),
12 inclusive, of subdivision (c) of Section 13955, who is the primary
13 caretaker of a minor victim whose claim is not denied or reduced
14 pursuant to Section 13956 in a total amount not to exceed ten
15 thousand dollars (\$10,000) for not more than two derivative
16 victims.

17 (B) The following persons may be reimbursed for the expense
18 of their outpatient mental health counseling in an amount not to
19 exceed three thousand dollars (\$3,000):

20 (i) A derivative victim not eligible for reimbursement pursuant
21 to subparagraph (A), provided that mental health counseling of a
22 derivative victim described in paragraph (5) of subdivision (c) of
23 Section 13955, shall be reimbursed only if that counseling is
24 necessary for the treatment of the victim.

25 (ii) A victim of a crime of unlawful sexual intercourse with a
26 minor committed in violation of subdivision (d) of Section 261.5
27 of the Penal Code. A derivative victim of a crime committed in
28 violation of subdivision (d) of Section 261.5 of the Penal Code
29 shall not be eligible for reimbursement of mental health
30 counseling expenses. The total award to or on behalf of a victim
31 of a crime committed in violation of subdivision (d) of Section
32 261.5 of the Penal Code may not exceed three thousand dollars
33 (\$3,000) for mental health counseling expenses only.

34 (C) The board may reimburse a victim or derivative victim for
35 outpatient mental health counseling in excess of that authorized by
36 subparagraphs (A) or (B) or for inpatient psychiatric,
37 psychological, or other mental health counseling if the claim is
38 based on dire or exceptional circumstances that require more
39 extensive treatment, as approved by the board.

(D) Expenses for psychiatric, psychological, or other mental health counseling related services may be reimbursed only if the services were provided by either of the following individuals:

(i) A person who would have been authorized to provide those services pursuant to the provisions of former Article 1 (commencing with Section 13959) as it read on January 1, 2002.

(ii) A person who is licensed by the state to provide those services, or who is properly supervised by a person who is so licensed, subject to the board's approval and subject to the limitations and restrictions the board may impose.

(3) Reimburse the expenses of nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(4) Subject to the limitations set forth in Section 13957.5, authorize compensation equal to the loss of income or loss of support, or both, that a victim or derivative victim incurs as a direct result of the victim's or derivative victim's injury or the victim's death. If the victim or derivative victim requests that the board give priority to reimbursement of loss of income or support, the board may not pay medical expenses, or mental health counseling expenses, except upon the request of the victim or derivative victim or after determining that payment of these expenses will not decrease the funds available for payment of loss of income or support.

(5) Authorize a cash payment to or on behalf of the victim for job retraining or similar employment-oriented services.

(6) Reimburse the expense for installing or increasing residential security, not to exceed one thousand dollars (\$1,000), with respect to a crime that occurred in the victim's residence, upon verification by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim. Installing or increasing residential security may include, but need not be limited to, both of the following:

(A) Home security device or system.

(B) Replacing or increasing the number of locks.

(7) Reimburse the expense of renovating or retrofitting a victim's residence or a vehicle, or both, to make the residence, the vehicle, or both, accessible or the vehicle operational by a victim upon verification that the expense is medically necessary for a

1 victim who is permanently disabled as a direct result of the crime,
2 whether the disability is partial or total.

3 (8) Authorize a cash payment or reimbursement not to exceed
4 two thousand dollars (\$2,000) to a victim for expenses incurred in
5 relocating, if the expenses are determined by law enforcement to
6 be necessary for the personal safety of the victim or by a mental
7 health treatment provider to be necessary for the emotional
8 well-being of the victim. When a relocation payment or
9 reimbursement is provided to a victim of sexual assault or
10 domestic violence and the identity of the offender is known to the
11 victim, the victim shall agree not to inform the offender of the
12 location of the victim's new residence and not to allow the offender
13 on the premises at any time, or shall agree to seek a restraining
14 order against the offender. The cash payment or reimbursement
15 made under this subdivision shall only be awarded once to any
16 victim, except that the board may, under compelling
17 circumstances, award a second cash payment or reimbursement to
18 the same victim if both of the following conditions are met:

19 (A) The crime occurs more than three years from the date of the
20 crime giving rise to the initial relocation cash payment or
21 reimbursement.

22 (B) The crime does not involve the same offender.

23 (9) When a victim dies as a result of a crime, the board may
24 reimburse any individual who voluntarily, and without
25 anticipation of personal gain, pays or assumes the obligation to pay
26 any of the following expenses:

27 (A) The medical expenses incurred as a direct result of the
28 crime in an amount not to exceed the rates or limitations
29 established by the board.

30 (B) When the crime occurs in a residence, the reasonable costs
31 to clean the scene of the crime in an amount not to exceed one
32 thousand dollars (\$1,000). Services reimbursed pursuant to this
33 subdivision shall be performed by persons registered with the State
34 Department of Health Services as trauma scene waste practitioners
35 in accordance with Chapter 9.5 (commencing with Section
36 118321) of Part 14 of Division 104 of the Health and Safety Code.

37 (C) The funeral and burial expenses incurred as a direct result
38 of the crime, not to exceed seven thousand five hundred dollars
39 (\$7,500).

(b) (1) Except as otherwise provided in paragraph (2), the total aggregate award to a victim and all derivative victims who sustain a loss as a result of the crime against that victim may not exceed thirty-five thousand dollars (\$35,000), except that this amount may be increased to seventy thousand dollars (\$70,000) if federal funds for that increase are available.

(2) Subject to the limitations in Section 13957.5, but notwithstanding paragraph (1) of this section, a victim permanently disabled as a direct result of a crime shall be individually eligible for an award in the amount limited as provided in paragraph (1), and a separate limit of seventy thousand dollars (\$70,000) shall apply to the aggregate losses of all derivative victims that result from the crime against that permanently disabled victim.

(c) This section shall remain in effect only until January 1, 2006, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, 2007, deletes or extends that date.

~~SEC. 3.~~

SEC. 2. Section 13957 is added to the Government Code, to read:

13957. (a) The board may grant for pecuniary loss, when the board determines it will best aid the person seeking compensation, as follows:

(1) Subject to the limitations set forth in Section 13957.2, reimburse the amount of medical or medical-related expenses incurred by the victim, including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) Subject to the limitations set forth in Section 13957.2, reimburse the amount of outpatient psychiatric, psychological, or other mental health counseling related expenses incurred by the victim or derivative victim, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code, and including family psychiatric, psychological, or mental health counseling for the successful treatment of the victim provided to family members of the victim in the presence of the victim, whether or not the family member relationship existed at

1 the time of the crime, that became necessary as a direct result of
2 the crime, subject to the following conditions:

3 (A) The following persons may be reimbursed for the expense
4 of their outpatient mental health counseling in an amount not to
5 exceed ten thousand dollars (\$10,000):

6 (i) A victim.

7 (ii) A derivative victim who is the surviving parent, sibling,
8 child, spouse, fiancé, or fiancée of a victim of a crime that directly
9 resulted in the death of the victim.

10 (iii) A derivative victim, as described in paragraphs (1) to (4),
11 inclusive, of subdivision (c) of Section 13955, who is the primary
12 caretaker of a minor victim whose claim is not denied or reduced
13 pursuant to Section 13956 in a total amount not to exceed ten
14 thousand dollars (\$10,000) for not more than two derivative
15 victims.

16 (B) The following persons may be reimbursed for the expense
17 of their outpatient mental health counseling in an amount not to
18 exceed three thousand dollars (\$3,000):

19 (i) A derivative victim not eligible for reimbursement pursuant
20 to subparagraph (A), provided that mental health counseling of a
21 derivative victim described in paragraph (5) of subdivision (c) of
22 Section 13955, shall be reimbursed only if that counseling is
23 necessary for the treatment of the victim.

24 (ii) A victim of a crime of unlawful sexual intercourse with a
25 minor committed in violation of subdivision (d) of Section 261.5
26 of the Penal Code. A derivative victim of a crime committed in
27 violation of subdivision (d) of Section 261.5 of the Penal Code
28 shall not be eligible for reimbursement of mental health
29 counseling expenses. The total award to or on behalf of a victim
30 of a crime committed in violation of subdivision (d) of Section
31 261.5 of the Penal Code may not exceed three thousand dollars
32 (\$3,000) for mental health counseling expenses only.

33 (C) The board may reimburse a victim or derivative victim for
34 outpatient mental health counseling in excess of that authorized by
35 subparagraphs (A) or (B) or for inpatient psychiatric,
36 psychological, or other mental health counseling if the claim is
37 based on dire or exceptional circumstances that require more
38 extensive treatment, as approved by the board.

(D) Expenses for psychiatric, psychological, or other mental health counseling related services may be reimbursed only if the services were provided by either of the following individuals:

(i) A person who would have been authorized to provide those services pursuant to the provisions of former Article 1 (commencing with Section 13959) as it read on January 1, 2002.

(ii) A person who is licensed by the state to provide those services, or who is properly supervised by a person who is so licensed, subject to the board's approval and subject to the limitations and restrictions the board may impose.

(3) Reimburse the expenses of nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(4) Subject to the limitations set forth in Section 13957.5, authorize compensation equal to the loss of income or loss of support, or both, that a victim or derivative victim incurs as a direct result of the victim's or derivative victim's injury or the victim's death. If the victim or derivative victim requests that the board give priority to reimbursement of loss of income or support, the board may not pay medical expenses, or mental health counseling expenses, except upon the request of the victim or derivative victim or after determining that payment of these expenses will not decrease the funds available for payment of loss of income or support.

(5) Authorize a cash payment to or on behalf of the victim for job retraining or similar employment-oriented services.

(6) Reimburse the expense for installing or increasing residential security, not to exceed one thousand dollars (\$1,000), with respect to a crime that occurred in the victim's residence, upon verification by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim. Installing or increasing residential security may include, but need not be limited to, both of the following:

(A) Home security device or system.

(B) Replacing or increasing the number of locks.

(7) Reimburse the expense of renovating or retrofitting a victim's residence or a vehicle, or both, to make the residence, the vehicle, or both, accessible or the vehicle operational by a victim upon verification that the expense is medically necessary for a

1 victim who is permanently disabled as a direct result of the crime,
2 whether the disability is partial or total.

3 (8) Authorize a cash payment or reimbursement not to exceed
4 two thousand dollars (\$2,000) to a victim for expenses incurred in
5 relocating, if the expenses are determined by law enforcement to
6 be necessary for the personal safety of the victim or by a mental
7 health treatment provider to be necessary for the emotional
8 well-being of the victim. When a relocation payment or
9 reimbursement is provided to a victim of sexual assault or
10 domestic violence and the identity of the offender is known to the
11 victim, the victim shall agree not to inform the offender of the
12 location of the victim's new residence and not to allow the offender
13 on the premises at any time, or shall agree to seek a restraining
14 order against the offender. The cash payment or reimbursement
15 made under this subdivision shall only be awarded once to any
16 victim, except that the board may, under compelling
17 circumstances, award a second cash payment or reimbursement to
18 the same victim if both of the following conditions are met:

19 (A) The crime occurs more than three years from the date of the
20 crime giving rise to the initial relocation cash payment or
21 reimbursement.

22 (B) The crime does not involve the same offender.

23 (9) When a victim dies as a result of a crime, the board may
24 reimburse any individual who voluntarily, and without
25 anticipation of personal gain, pays or assumes the obligation to pay
26 any of the following expenses:

27 (A) The medical expenses incurred as a direct result of the
28 crime in an amount not to exceed the rates or limitations
29 established by the board.

30 (B) When the crime occurs in a residence, the reasonable costs
31 to clean the scene of the crime in an amount not to exceed one
32 thousand dollars (\$1,000). Services reimbursed pursuant to this
33 subdivision shall be performed by persons registered with the State
34 Department of Health Services as trauma scene waste practitioners
35 in accordance with Chapter 9.5 (commencing with Section
36 118321) of Part 14 of Division 104 of the Health and Safety Code.

37 (C) The funeral and burial expenses incurred as a direct result
38 of the crime, not to exceed seven thousand five hundred dollars
39 (\$7,500).

(b) The total award to or on behalf of each victim or derivative victim may not exceed thirty-five thousand dollars (\$35,000), except that this amount may be increased to seventy thousand dollars (\$70,000) if federal funds for that increase are available.

(c) This section shall become operative on January 1, 2006 2007.

~~SEC. 4.—~~

SEC. 3. Section 13964.5 is added to the Government Code, to read:

13964.5. (a) In January of each year, the board shall determine whether sufficient funds will be available in the following fiscal year to pay all payments authorized pursuant to this chapter. If the board determines that there will be insufficient funds available to pay all authorized payments, the board shall determine the percentage necessary to reduce awards and payments so that the total amount of payments made pursuant to this chapter does not exceed the amount of money available. The board shall in the following fiscal year reduce all payments by the percentage determined necessary.

(b) Payments made in a reduced amount pursuant to this section shall be payment in full of the authorized reimbursement. A provider who accepts a payment made pursuant to this section shall accept that payment as payment-in-full and may not accept additional amounts for that service from the recipient of the service.

(c) This section shall remain in effect only until January 1, 2006, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, 2007, deletes or extends that date.

~~SEC. 5.—Section 1001.90 of the Penal Code is amended to read:~~

~~1001.90.—(a) For all persons charged with a felony or misdemeanor whose case is diverted by the court pursuant to this title, the court shall impose on the defendant a diversion restitution fee in addition to any other administrative fee provided or imposed under the law. This fee shall not be imposed upon persons whose case is diverted by the court pursuant to Chapter 2.8 (commencing with Section 1001.20).~~

~~(b) The diversion restitution fee imposed pursuant to this section shall be set at the discretion of the court and shall be~~

commensurate with the seriousness of the offense, but shall not be less than five hundred dollars (\$500), and not more than three thousand dollars (\$3,000) if the person is charged with a felony, and shall not be less than two hundred fifty dollars (\$250), and not more than one thousand dollars (\$1,000) if the person is charged with a misdemeanor.

(c) The diversion restitution fee shall be ordered regardless of the defendant's present ability to pay. However, if the court finds that there are compelling and extraordinary reasons, the court may waive imposition of the fee. When the waiver is granted, the court shall state on the record all reasons supporting the waiver. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fee. Inability to pay may be considered only in increasing the amount of the restitution fee in excess of the five hundred dollar (\$500) or two hundred fifty dollar (\$250) minimum. The court may not stay the restitution fee after it is imposed. Except as provided in this subdivision, the court shall impose the separate and additional diversion restitution fee required by this section.

(d) In setting the amount of the diversion restitution fee in excess of the five hundred dollar (\$500) or two hundred fifty dollar (\$250) minimum, the court shall consider any relevant factors, including, but not limited to, the defendant's ability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, and the extent to which any other person suffered any losses as a result of the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's ability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating the lack of his or her ability to pay. Express findings by the court as to the factors bearing on the amount of the fee shall not be required. A separate hearing for the diversion restitution fee shall not be required.

(e) The court shall not limit the ability of the state to enforce the fee imposed by this section in the manner of a judgment in a civil action. The court shall not modify the amount of this fee except to correct an error in the setting of the amount of the fee imposed.

~~(f) The fee imposed pursuant to this section shall be immediately deposited in the Restitution Fund for use pursuant to Section 13950 of the Government Code.~~

~~(g) The board of supervisors of any county may impose a fee at its discretion to cover the actual administrative costs of collection of the restitution fee, not to exceed 10 percent of the amount ordered to be paid. Any fee imposed pursuant to this subdivision shall be deposited in the general fund of the county.~~

~~(h) The state shall pay the county agency responsible for collecting the diversion restitution fee owed to the Restitution Fund under this section, 10 percent of the funds so owed and collected by the county agency and deposited in the Restitution Fund. This payment shall be made only when the funds are deposited in the Restitution Fund within 45 days of the end of the month in which the funds are collected. Receiving 10 percent of the moneys collected as being owed to the Restitution Fund shall be considered an incentive for collection efforts and shall be used for furthering these collection efforts. The 10 percent rebates shall be used to augment the budgets for the county agencies responsible for collection of funds owed to the Restitution Fund as provided in this section. The 10 percent rebates shall not be used to supplant county funding.~~

~~(i) As used in this section, "diversion" also means deferred entry of judgment pursuant to Chapter 2.5 (commencing with Section 1000).~~

~~(j) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.~~

SEC. 6.—

SEC. 4. Section 1001.90 of the Penal Code is amended to read:

1001.90. (a) For all persons charged with a felony or misdemeanor whose case is diverted by the court pursuant to this title, the court shall impose on the defendant a diversion restitution fee in addition to any other administrative fee provided or imposed under the law. This fee shall not be imposed upon persons whose case is diverted by the court pursuant to Chapter 2.8 (commencing with Section 1001.20).

(b) The diversion restitution fee imposed pursuant to this section shall be set at the discretion of the court and shall be

1 commensurate with the seriousness of the offense, but shall not be
2 less than ~~one hundred dollars (\$100), and not more than one~~
3 ~~thousand dollars (\$1,000)~~ *one hundred fifty dollars (\$150) for a*
4 *misdemeanor or three hundred dollars (\$300) for a felony up to a*
5 *maximum of one thousand dollars (\$1,000) for either offense.*

6 (c) The diversion restitution fee shall be ordered regardless of
7 the defendant's present ability to pay. However, if the court finds
8 that there are compelling and extraordinary reasons, the court may
9 waive imposition of the fee. When the waiver is granted, the court
10 shall state on the record all reasons supporting the waiver. Except
11 as provided in this subdivision, the court shall impose the separate
12 and additional diversion restitution fee required by this section.

13 (d) In setting the amount of the diversion restitution fee in
14 excess of the ~~one hundred dollar (\$100) minimum-minimums~~
15 *specified in subdivision (b) of this section*, the court shall consider
16 any relevant factors, including, but not limited to, the defendant's
17 ability to pay, the seriousness and gravity of the offense and the
18 circumstances of its commission, any economic gain derived by
19 the defendant as a result of the crime, and the extent to which any
20 other person suffered any losses as a result of the crime. Those
21 losses may include pecuniary losses to the victim or his or her
22 dependents as well as intangible losses, such as psychological
23 harm caused by the crime. Consideration of a defendant's ability
24 to pay may include his or her future earning capacity. A defendant
25 shall bear the burden of demonstrating the lack of his or her ability
26 to pay. Express findings by the court as to the factors bearing on
27 the amount of the fee shall not be required. A separate hearing for
28 the diversion restitution fee shall not be required.

29 (e) The court shall not limit the ability of the state to enforce the
30 fee imposed by this section in the manner of a judgment in a civil
31 action. The court shall not modify the amount of this fee except to
32 correct an error in the setting of the amount of the fee imposed.

33 (f) The fee imposed pursuant to this section shall be
34 immediately deposited in the Restitution Fund for use pursuant to
35 Section ~~13967-13964~~ of the Government Code.

36 (g) The board of supervisors of any county may impose a fee
37 at its discretion to cover the actual administrative costs of
38 collection of the restitution fee, not to exceed 10 percent of the
39 amount ordered to be paid. Any fee imposed pursuant to this
40 subdivision shall be deposited in the general fund of the county.

1 (h) The state shall pay the county agency responsible for
2 collecting the diversion restitution fee owed to the Restitution
3 Fund under this section, 10 percent of the funds so owed and
4 collected by the county agency and deposited in the Restitution
5 Fund. This payment shall be made only when the funds are
6 deposited in the Restitution Fund within 45 days of the end of the
7 month in which the funds are collected. Receiving 10 percent of
8 the moneys collected as being owed to the Restitution Fund shall
9 be considered an incentive for collection efforts and shall be used
10 for furthering these collection efforts. The 10 percent rebates shall
11 be used to augment the budgets for the county agencies responsible
12 for collection of funds owed to the Restitution Fund as provided
13 in this section. The 10 percent rebates shall not be used to supplant
14 county funding.

15 (i) As used in this section, “diversion” also means deferred
16 entry of judgment pursuant to Chapter 2.5 (commencing with
17 Section 1000).

18 (j) *This section shall remain in effect only until January 1,*
19 *2007, and as of that date is repealed, unless a later enacted statute,*
20 *that is enacted before January 1, 2007, deletes or extends that date.*

21 SEC. 5. Section 1001.90 is added to the Penal Code, to read:

22 1001.90. (a) For all persons charged with a felony or
23 misdemeanor whose case is diverted by the court pursuant to this
24 title, the court shall impose on the defendant a diversion restitution
25 fee in addition to any other administrative fee provided or imposed
26 under the law. This fee shall not be imposed upon persons whose
27 case is diverted by the court pursuant to Chapter 2.8 (commencing
28 with Section 1001.20).

29 (b) The diversion restitution fee imposed pursuant to this
30 section shall be set at the discretion of the court and shall be
31 commensurate with the seriousness of the offense, but shall not be
32 less than one hundred dollars (\$100), and not more than one
33 thousand dollars (\$1,000).

34 (c) The diversion restitution fee shall be ordered regardless of
35 the defendant’s present ability to pay. However, if the court finds
36 that there are compelling and extraordinary reasons, the court may
37 waive imposition of the fee. When the waiver is granted, the court
38 shall state on the record all reasons supporting the waiver. Except
39 as provided in this subdivision, the court shall impose the separate
40 and additional diversion restitution fee required by this section.



1 (d) In setting the amount of the diversion restitution fee in
2 excess of the one hundred dollar (\$100) minimum, the court shall
3 consider any relevant factors, including, but not limited to, the
4 defendant's ability to pay, the seriousness and gravity of the
5 offense and the circumstances of its commission, any economic
6 gain derived by the defendant as a result of the crime, and the
7 extent to which any other person suffered any losses as a result of
8 the crime. Those losses may include pecuniary losses to the victim
9 or his or her dependents as well as intangible losses, such as
10 psychological harm caused by the crime. Consideration of a
11 defendant's ability to pay may include his or her future earning
12 capacity. A defendant shall bear the burden of demonstrating the
13 lack of his or her ability to pay. Express findings by the court as
14 to the factors bearing on the amount of the fee shall not be required.
15 A separate hearing for the diversion restitution fee shall not be
16 required.

17 (e) The court shall not limit the ability of the state to enforce the
18 fee imposed by this section in the manner of a judgment in a civil
19 action. The court shall not modify the amount of this fee except to
20 correct an error in the setting of the amount of the fee imposed.

21 (f) The fee imposed pursuant to this section shall be
22 immediately deposited in the Restitution Fund for use pursuant to
23 Section ~~13950~~ 13964 of the Government Code.

24 (g) The board of supervisors of any county may impose a fee
25 at its discretion to cover the actual administrative costs of
26 collection of the restitution fee, not to exceed 10 percent of the
27 amount ordered to be paid. Any fee imposed pursuant to this
28 subdivision shall be deposited in the general fund of the county.

29 (h) The state shall pay the county agency responsible for
30 collecting the diversion restitution fee owed to the Restitution
31 Fund under this section, 10 percent of the funds so owed and
32 collected by the county agency and deposited in the Restitution
33 Fund. This payment shall be made only when the funds are
34 deposited in the Restitution Fund within 45 days of the end of the
35 month in which the funds are collected. Receiving 10 percent of
36 the moneys collected as being owed to the Restitution Fund shall
37 be considered an incentive for collection efforts and shall be used
38 for furthering these collection efforts. The 10 percent rebates shall
39 be used to augment the budgets for the county agencies responsible
40 for collection of funds owed to the Restitution Fund as provided

1 in this section. The 10 percent rebates shall not be used to supplant
2 county funding.

3 (i) As used in this section, “diversion” also means deferred
4 entry of judgment pursuant to Chapter 2.5 (commencing with
5 Section 1000).

6 (j) This section shall become operative on January 1, 2006
7 2007.

8 SEC. 7. Section 1202.4 of the Penal Code is amended to read:

9 1202.4. (a) (1) It is the intent of the Legislature that a victim
10 of crime who incurs any economic loss as a result of the
11 commission of a crime shall receive restitution directly from any
12 defendant convicted of that crime.

13 (2) Upon a person being convicted of any crime in the State of
14 California, the court shall order the defendant to pay a fine in the
15 form of a penalty assessment in accordance with Section 1464.

16 (3) The court, in addition to any other penalty provided or
17 imposed under the law, shall order the defendant to pay both of the
18 following:

19 (A) A restitution fine in accordance with subdivision (b).

20 (B) Restitution to the victim or victims, if any, in accordance
21 with subdivision (f), which shall be enforceable as if the order
22 were a civil judgment.

23 (b) In every case where a person is convicted of a crime, the
24 court shall impose a separate and additional restitution fine, unless
25 it finds compelling and extraordinary reasons for not doing so, and
26 states those reasons on the record.

27 (1) The restitution fine shall be set at the discretion of the court
28 and commensurate with the seriousness of the offense, but shall
29 not be less than five hundred dollars (\$500), and not more than ten
30 thousand dollars (\$10,000), if the person is convicted of a felony,
31 and shall not be less than two hundred fifty dollars (\$250), and not
32 more than one thousand dollars (\$1,000), if the person is convicted
33 of a misdemeanor.

34 (2) In setting a felony restitution fine, the court may determine
35 the amount of the fine as the product of five hundred dollars (\$500)
36 multiplied by the number of years of imprisonment the defendant
37 is ordered to serve, multiplied by the number of felony counts of
38 which the defendant is convicted.

39 (c) (1) The court shall impose the restitution fine unless it finds
40 compelling and extraordinary reasons for not doing so, and states

those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine.

(2) A defendant's ability to pay may be considered in imposing a fine in excess of the five hundred dollar (\$500) or two hundred fifty dollar (\$250) minimum. Where the court finds that the defendant is unable to pay the five hundred dollar (\$500) or two hundred fifty dollar (\$250) minimum fine, the court may impose a fine that is between two hundred dollars (\$200) and five hundred dollars (\$500) for a felony conviction, and a fine that is between one hundred dollars (\$100) and two hundred fifty dollars (\$250) for a misdemeanor conviction.

(d) In setting the amount of the fine pursuant to subdivision (b) in excess of the five hundred dollar (\$500) or two hundred fifty dollar (\$250) minimum, the court shall consider any relevant factors including, but not limited to, the defendant's inability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, the extent to which any other person suffered any losses as a result of the crime, and the number of victims involved in the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's inability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating his or her inability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine shall not be required.

(e) The restitution fine shall not be subject to penalty assessments as provided in Section 1464, and shall be deposited in the Restitution Fund in the State Treasury.

(f) In every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and

1 ~~extraordinary reasons for not doing so, and states them on the~~
2 ~~record.~~

3 ~~(1) The defendant has the right to a hearing before a judge to~~
4 ~~dispute the determination of the amount of restitution. The court~~
5 ~~may modify the amount, on its own motion or on the motion of the~~
6 ~~district attorney, the victim or victims, or the defendant. If a~~
7 ~~motion is made for modification of a restitution order, the victim~~
8 ~~shall be notified of that motion at least 10 days prior to the~~
9 ~~proceeding held to decide the motion.~~

10 ~~(2) Determination of the amount of restitution ordered~~
11 ~~pursuant to this subdivision shall not be affected by the~~
12 ~~indemnification or subrogation rights of any third party.~~
13 ~~Restitution ordered pursuant to this subdivision shall be ordered~~
14 ~~to be deposited to the Restitution Fund to the extent that the victim,~~
15 ~~as defined in subdivision (k), has received assistance from the~~
16 ~~Victims of Crime Program pursuant to Chapter 5 (commencing~~
17 ~~with Section 13950) of Part 4 of Division 3 of Title 2 of the~~
18 ~~Government Code.~~

19 ~~(3) To the extent possible, the restitution order shall be~~
20 ~~prepared by the sentencing court, shall identify each victim and~~
21 ~~each loss to which it pertains, and shall be of a dollar amount that~~
22 ~~is sufficient to fully reimburse the victim or victims for every~~
23 ~~determined economic loss incurred as the result of the defendant's~~
24 ~~criminal conduct, including, but not limited to, all of the~~
25 ~~following:~~

26 ~~(A) Full or partial payment for the value of stolen or damaged~~
27 ~~property. The value of stolen or damaged property shall be the~~
28 ~~replacement cost of like property, or the actual cost of repairing the~~
29 ~~property when repair is possible.~~

30 ~~(B) Medical expenses.~~

31 ~~(C) Mental health counseling expenses.~~

32 ~~(D) Wages or profits lost due to injury incurred by the victim,~~
33 ~~and if the victim is a minor, wages or profits lost by the minor's~~
34 ~~parent, parents, guardian, or guardians, while caring for the~~
35 ~~injured minor. Lost wages shall include any commission income~~
36 ~~as well as any base wages. Commission income shall be~~
37 ~~established by evidence of commission income during the~~
38 ~~12-month period prior to the date of the crime for which restitution~~
39 ~~is being ordered, unless good cause for a shorter time period is~~
40 ~~shown.~~

1 ~~(E) Wages or profits lost by the victim, and if the victim is a~~
2 ~~minor, wages or profits lost by the minor's parent, parents,~~
3 ~~guardian, or guardians, due to time spent as a witness or in assisting~~
4 ~~the police or prosecution. Lost wages shall include any~~
5 ~~commission income as well as any base wages. Commission~~
6 ~~income shall be established by evidence of commission income~~
7 ~~during the 12-month period prior to the date of the crime for which~~
8 ~~restitution is being ordered, unless good cause for a shorter time~~
9 ~~period is shown.~~

10 ~~(F) Noneconomic losses, including, but not limited to,~~
11 ~~psychological harm, for felony violations of Section 288.~~

12 ~~(G) Interest, at the rate of 10 percent per annum, that accrues~~
13 ~~as of the date of sentencing or loss, as determined by the court.~~

14 ~~(H) Actual and reasonable attorney's fees and other costs of~~
15 ~~collection accrued by a private entity on behalf of the victim.~~

16 ~~(I) Expenses incurred by an adult victim in relocating away~~
17 ~~from the defendant, including, but not limited to, deposits for~~
18 ~~utilities and telephone service, deposits for rental housing,~~
19 ~~temporary lodging and food expenses, clothing, and personal~~
20 ~~items. Expenses incurred pursuant to this section shall be verified~~
21 ~~by law enforcement to be necessary for the personal safety of the~~
22 ~~victim or by a mental health treatment provider to be necessary for~~
23 ~~the emotional well-being of the victim.~~

24 ~~(J) Expenses to install or increase residential security incurred~~
25 ~~related to a crime, as defined in subdivision (c) of Section 667.5,~~
26 ~~including, but not limited to, a home security device or system, or~~
27 ~~replacing or increasing the number of locks.~~

28 ~~(K) Expenses to retrofit a residence or vehicle, or both, to make~~
29 ~~the residence accessible to or the vehicle operational by the victim,~~
30 ~~if the victim is permanently disabled, whether the disability is~~
31 ~~partial or total, as a direct result of the crime.~~

32 ~~(4) (A) If, as a result of the defendant's conduct, the~~
33 ~~Restitution Fund has provided assistance to or on behalf of a victim~~
34 ~~or derivative victim pursuant to Chapter 5 (commencing with~~
35 ~~Section 13950) of Part 4 of Division 3 of Title 2 of the Government~~
36 ~~Code, the amount of assistance provided shall be presumed to be~~
37 ~~a direct result of the defendant's criminal conduct and shall be~~
38 ~~included in the amount of the restitution ordered.~~

39 ~~(B) The amount of assistance provided by the Restitution Fund~~
40 ~~shall be established by copies of bills submitted to the California~~

~~1 Victim Compensation and Government Claims Board reflecting
2 the amount paid by the board and whether the services for which
3 payment was made were for medical or dental expenses, funeral
4 or burial expenses, mental health counseling, wage or support
5 losses, or rehabilitation. Certified copies of these bills provided by
6 the California Victim Compensation and Government Claims
7 Board and redacted to protect the privacy and safety of the victim
8 or any legal privilege, together with a statement made under
9 penalty of perjury by the custodian of records that those bills were
10 submitted to and were paid by the California Victim Compensation
11 and Government Claims Board, shall be sufficient to meet this
12 requirement.~~

~~13 (C) If the defendant offers evidence to rebut the presumption
14 established by this paragraph, the court may release additional
15 information contained in the records of the California Victim
16 Compensation and Government Claims Board to the defendant
17 only after reviewing that information in camera and finding that
18 the information is necessary for the defendant to dispute the
19 amount of the restitution order.~~

~~20 (5) Except as provided in paragraph (6), in any case in which
21 an order may be entered pursuant to this subdivision, the defendant
22 shall prepare and file a disclosure identifying all assets, income,
23 and liabilities in which the defendant held or controlled a present
24 or future interest as of the date of the defendant's arrest for the
25 crime for which restitution may be ordered. This disclosure shall
26 be available to the victim pursuant to Section 1214, and any use the
27 court may make of the disclosure shall be subject to the restrictions
28 of subdivision (g). The disclosure shall be signed by the defendant
29 upon a form approved or adopted by the Judicial Council for the
30 purpose of facilitating the disclosure. Any defendant who willfully
31 states as true any material matter that he or she knows to be false
32 on the disclosure required by this subdivision is guilty of a
33 misdemeanor, unless this conduct is punishable as perjury or
34 another provision of law provides for a greater penalty.~~

~~35 (6) A defendant who fails to file the financial disclosure
36 required in paragraph (5), but who has filed a financial affidavit or
37 financial information pursuant to subdivision (c) of Section 987,
38 shall be deemed to have waived the confidentiality of that affidavit
39 or financial information as to a victim in whose favor the order of
40 restitution is entered pursuant to subdivision (f). The affidavit or~~

1 ~~information shall serve in lieu of the financial disclosure required~~
2 ~~in paragraph (5), and paragraphs (7) to (10), inclusive, shall not~~
3 ~~apply.~~

4 ~~(7) Except as provided in paragraph (6), the defendant shall file~~
5 ~~the disclosure with the clerk of the court no later than the date set~~
6 ~~for the defendant's sentencing, unless otherwise directed by the~~
7 ~~court. The disclosure may be inspected or copied as provided by~~
8 ~~subdivision (b), (c), or (d) of Section 1203.05.~~

9 ~~(8) In its discretion, the court may relieve the defendant of the~~
10 ~~duty under paragraph (7) of filing with the clerk by requiring that~~
11 ~~the defendant's disclosure be submitted as an attachment to, and~~
12 ~~be available to, those authorized to receive the following:~~

13 ~~(A) Any report submitted pursuant to subparagraph (C) of~~
14 ~~paragraph (2) of subdivision (b) of Section 1203 or subdivision (g)~~
15 ~~of Section 1203.~~

16 ~~(B) Any stipulation submitted pursuant to paragraph (4) of~~
17 ~~subdivision (b) of Section 1203.~~

18 ~~(C) Any report by the probation officer, or any information~~
19 ~~submitted by the defendant applying for a conditional sentence~~
20 ~~pursuant to subdivision (d) of Section 1203.~~

21 ~~(9) The court may consider a defendant's unreasonable failure~~
22 ~~to make a complete disclosure pursuant to paragraph (5) as any of~~
23 ~~the following:~~

24 ~~(A) A circumstance in aggravation of the crime in imposing a~~
25 ~~term under subdivision (b) of Section 1170.~~

26 ~~(B) A factor indicating that the interests of justice would not be~~
27 ~~served by admitting the defendant to probation under Section~~
28 ~~1203.~~

29 ~~(C) A factor indicating that the interests of justice would not be~~
30 ~~served by conditionally sentencing the defendant under Section~~
31 ~~1203.~~

32 ~~(D) A factor indicating that the interests of justice would not be~~
33 ~~served by imposing less than the maximum fine and sentence fixed~~
34 ~~by law for the case.~~

35 ~~(10) A defendant's failure or refusal to make the required~~
36 ~~disclosure pursuant to paragraph (5) shall not delay entry of an~~
37 ~~order of restitution or pronouncement of sentence. In appropriate~~
38 ~~cases, the court may do any of the following:~~

39 ~~(A) Require the defendant to be examined by the district~~
40 ~~attorney pursuant to subdivision (h).~~

~~(B) If sentencing the defendant under Section 1170, provide that the victim shall receive a copy of the portion of the probation report filed pursuant to Section 1203.10 concerning the defendant's employment, occupation, finances, and liabilities.~~

~~(C) If sentencing the defendant under Section 1203, set a date and place for submission of the disclosure required by paragraph (5) as a condition of probation or suspended sentence.~~

~~(g) The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of a restitution order.~~

~~(h) The district attorney may request an order of examination pursuant to the procedures specified in Article 2 (commencing with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, in order to determine the defendant's financial assets for purposes of collecting on the restitution order.~~

~~(i) A restitution order imposed pursuant to subdivision (f) shall be enforceable as if the order were a civil judgment.~~

~~(j) The making of a restitution order pursuant to subdivision (f) shall not affect the right of a victim to recovery from the Restitution Fund as otherwise provided by law, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the defendant arising out of the crime for which the defendant was convicted.~~

~~(k) For purposes of this section, "victim" shall include all of the following:~~

~~(1) The immediate surviving family of the actual victim.~~

~~(2) Any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.~~

~~(3) "Derivative victims" as defined in Section 13951 of the Government Code.~~

~~(l) At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting~~

1 ~~the restitution fine, not to exceed 10 percent of the amount ordered~~
2 ~~to be paid, to be added to the restitution fine and included in the~~
3 ~~order of the court, the proceeds of which shall be deposited in the~~
4 ~~general fund of the county.~~

5 ~~(m) In every case in which the defendant is granted probation,~~
6 ~~the court shall make the payment of restitution fines and orders~~
7 ~~imposed pursuant to this section a condition of probation. Any~~
8 ~~portion of a restitution order that remains unsatisfied after a~~
9 ~~defendant is no longer on probation shall continue to be~~
10 ~~enforceable by a victim pursuant to Section 1214 until the~~
11 ~~obligation is satisfied.~~

12 ~~(n) If the court finds and states on the record compelling and~~
13 ~~extraordinary reasons why a restitution fine or full restitution order~~
14 ~~should not be required, the court shall order, as a condition of~~
15 ~~probation, that the defendant perform specified community~~
16 ~~service, unless it finds and states on the record compelling and~~
17 ~~extraordinary reasons not to require community service in addition~~
18 ~~to the finding that restitution should not be required. Upon~~
19 ~~revocation of probation, the court shall impose restitution pursuant~~
20 ~~to this section.~~

21 ~~(o) The provisions of Section 13963 of the Government Code~~
22 ~~shall apply to restitution imposed pursuant to this section.~~

23 ~~(p) This section shall remain in effect only until January 1,~~
24 ~~2006, and as of that date is repealed, unless a later enacted statute,~~
25 ~~that is enacted before January 1, 2006, deletes or extends that date.~~

26 ~~SEC. 8.—~~

27 *SEC. 6. Section 1202.4 of the Penal Code is amended to read:*

28 1202.4. (a) (1) It is the intent of the Legislature that a victim
29 of crime who incurs any economic loss as a result of the
30 commission of a crime shall receive restitution directly from any
31 defendant convicted of that crime.

32 (2) Upon a person being convicted of any crime in the State of
33 California, the court shall order the defendant to pay a fine in the
34 form of a penalty assessment in accordance with Section 1464.

35 (3) The court, in addition to any other penalty provided or
36 imposed under the law, shall order the defendant to pay both of the
37 following:

38 (A) A restitution fine in accordance with subdivision (b).

1 (B) Restitution to the victim or victims, if any, in accordance
2 with subdivision (f), which shall be enforceable as if the order
3 were a civil judgment.

4 (b) In every case where a person is convicted of a crime, the
5 court shall impose a separate and additional restitution fine, unless
6 it finds compelling and extraordinary reasons for not doing so, and
7 states those reasons on the record.

8 (1) The restitution fine shall be set at the discretion of the court
9 and commensurate with the seriousness of the offense, but shall
10 not be less than ~~two~~ *three* hundred dollars ~~(\$200)~~ *(\$300)*, and not
11 more than ten thousand dollars (\$10,000), if the person is
12 convicted of a felony, and shall not be less than one hundred *fifty*
13 dollars ~~(\$100)~~ *(\$150)*, and not more than one thousand dollars
14 (\$1,000), if the person is convicted of a misdemeanor.

15 (2) In setting a felony restitution fine, the court may determine
16 the amount of the fine as the product of ~~two~~ *three* hundred dollars
17 ~~(\$200)~~ *(\$300)* multiplied by the number of years of imprisonment
18 the defendant is ordered to serve, multiplied by the number of
19 felony counts of which the defendant is convicted.

20 (c) The court shall impose the restitution fine unless it finds
21 compelling and extraordinary reasons for not doing so, and states
22 those reasons on the record. A defendant's inability to pay shall not
23 be considered a compelling and extraordinary reason not to impose
24 a restitution fine. Inability to pay may be considered only in
25 increasing the amount of the restitution fine in excess of the
26 ~~two hundred dollar (\$200)~~ *three hundred dollar (\$300)* or
27 ~~one hundred dollar (\$100)~~ *one hundred fifty dollar (\$150)*
28 minimum.

29 (d) In setting the amount of the fine pursuant to subdivision (b)
30 in excess of the ~~two hundred dollar (\$200)~~ *three hundred dollar*
31 *(\$300)* or ~~one hundred dollar (\$100)~~ *one hundred fifty dollar*
32 *(\$150)* minimum, the court shall consider any relevant factors
33 including, but not limited to, the defendant's inability to pay, the
34 seriousness and gravity of the offense and the circumstances of its
35 commission, any economic gain derived by the defendant as a
36 result of the crime, the extent to which any other person suffered
37 any losses as a result of the crime, and the number of victims
38 involved in the crime. Those losses may include pecuniary losses
39 to the victim or his or her dependents as well as intangible losses,
40 such as psychological harm caused by the crime. Consideration of

1 a defendant's inability to pay may include his or her future earning
2 capacity. A defendant shall bear the burden of demonstrating his
3 or her inability to pay. Express findings by the court as to the
4 factors bearing on the amount of the fine shall not be required. A
5 separate hearing for the fine shall not be required.

6 (e) The restitution fine shall not be subject to penalty
7 assessments as provided in Section 1464, and shall be deposited in
8 the Restitution Fund in the State Treasury.

9 (f) In every case in which a victim has suffered economic loss
10 as a result of the defendant's conduct, the court shall require that
11 the defendant make restitution to the victim or victims in an
12 amount established by court order, based on the amount of loss
13 claimed by the victim or victims or any other showing to the court.
14 If the amount of loss cannot be ascertained at the time of
15 sentencing, the restitution order shall include a provision that the
16 amount shall be determined at the direction of the court. The court
17 shall order full restitution unless it finds compelling and
18 extraordinary reasons for not doing so, and states them on the
19 record.

20 (1) The defendant has the right to a hearing before a judge to
21 dispute the determination of the amount of restitution. The court
22 may modify the amount, on its own motion or on the motion of the
23 district attorney, the victim or victims, or the defendant. If a
24 motion is made for modification of a restitution order, the victim
25 shall be notified of that motion at least 10 days prior to the
26 proceeding held to decide the motion.

27 (2) Determination of the amount of restitution ordered
28 pursuant to this subdivision shall not be affected by the
29 indemnification or subrogation rights of any third party.
30 Restitution ordered pursuant to this subdivision shall be ordered
31 to be deposited to the Restitution Fund to the extent that the victim,
32 as defined in subdivision (k), has received assistance from the
33 Victims of Crime Program pursuant to Article 1 (commencing
34 with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title
35 2 of the Government Code.

36 (3) To the extent possible, the restitution order shall be
37 prepared by the sentencing court, shall identify each victim and
38 each loss to which it pertains, and shall be of a dollar amount that
39 is sufficient to fully reimburse the victim or victims for every
40 determined economic loss incurred as the result of the defendant's

1 criminal conduct, including, but not limited to, all of the
2 following:

3 (A) Full or partial payment for the value of stolen or damaged
4 property. The value of stolen or damaged property shall be the
5 replacement cost of like property, or the actual cost of repairing the
6 property when repair is possible.

7 (B) Medical expenses.

8 (C) Mental health counseling expenses.

9 (D) Wages or profits lost due to injury incurred by the victim,
10 and if the victim is a minor, wages or profits lost by the minor's
11 parent, parents, guardian, or guardians, while caring for the
12 injured minor. Lost wages shall include any commission income
13 as well as any base wages. Commission income shall be
14 established by evidence of commission income during the
15 12-month period prior to the date of the crime for which restitution
16 is being ordered, unless good cause for a shorter time period is
17 shown.

18 (E) Wages or profits lost by the victim, and if the victim is a
19 minor, wages or profits lost by the minor's parent, parents,
20 guardian, or guardians, due to time spent as a witness or in assisting
21 the police or prosecution. Lost wages shall include any
22 commission income as well as any base wages. Commission
23 income shall be established by evidence of commission income
24 during the 12-month period prior to the date of the crime for which
25 restitution is being ordered, unless good cause for a shorter time
26 period is shown.

27 (F) Noneconomic losses, including, but not limited to,
28 psychological harm, for felony violations of Section 288.

29 (G) Interest, at the rate of 10 percent per annum, that accrues
30 as of the date of sentencing or loss, as determined by the court.

31 (H) Actual and reasonable attorney's fees and other costs of
32 collection accrued by a private entity on behalf of the victim.

33 (I) Expenses incurred by an adult victim in relocating away
34 from the defendant, including, but not limited to, deposits for
35 utilities and telephone service, deposits for rental housing,
36 temporary lodging and food expenses, clothing, and personal
37 items. Expenses incurred pursuant to this section shall be verified
38 by law enforcement to be necessary for the personal safety of the
39 victim or by a mental health treatment provider to be necessary for
40 the emotional well-being of the victim.



(J) Expenses to install or increase residential security incurred related to a crime, as defined in subdivision (c) of Section 667.5, including, but not limited to, a home security device or system, or replacing or increasing the number of locks.

(K) Expenses to retrofit a residence or vehicle, or both, to make the residence accessible to or the vehicle operational by the victim, if the victim is permanently disabled, whether the disability is partial or total, as a direct result of the crime.

(4) (A) If, as a result of the defendant's conduct, the Restitution Fund has provided assistance to or on behalf of a victim or derivative victim pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code, the amount of assistance provided shall be presumed to be a direct result of the defendant's criminal conduct and shall be included in the amount of the restitution ordered.

(B) The amount of assistance provided by the Restitution Fund shall be established by copies of bills submitted to the ~~State Board of Control~~ *California Victim Compensation and Government Claims Board* reflecting the amount paid by the board and whether the services for which payment was made were for medical or dental expenses, funeral or burial expenses, mental health counseling, wage or support losses, or rehabilitation. Certified copies of these bills provided by the State Board of Control and redacted to protect the privacy and safety of the victim or any legal privilege, together with a statement made under penalty of perjury by the custodian of records that those bills were submitted to and were paid by the ~~State Board of Control~~ *California Victim Compensation and Government Claims Board*, shall be sufficient to meet this requirement.

(C) If the defendant offers evidence to rebut the presumption established by this paragraph, the court may release additional information contained in the records of the ~~State Board of Control~~ *California Victim Compensation and Government Claims Board* to the defendant only after reviewing that information in camera and finding that the information is necessary for the defendant to dispute the amount of the restitution order.

(5) Except as provided in paragraph (6), in any case in which an order may be entered pursuant to this subdivision, the defendant shall prepare and file a disclosure identifying all assets, income, and liabilities in which the defendant held or controlled a present

1 or future interest as of the date of the defendant's arrest for the
2 crime for which restitution may be ordered. This disclosure shall
3 be available to the victim pursuant to Section 1214, and any use the
4 court may make of the disclosure shall be subject to the restrictions
5 of subdivision (g). The disclosure shall be signed by the defendant
6 upon a form approved or adopted by the Judicial Council for the
7 purpose of facilitating the disclosure. Any defendant who willfully
8 states as true any material matter that he or she knows to be false
9 on the disclosure required by this subdivision is guilty of a
10 misdemeanor, unless this conduct is punishable as perjury or
11 another provision of law provides for a greater penalty.

12 (6) A defendant who fails to file the financial disclosure
13 required in paragraph (5), but who has filed a financial affidavit or
14 financial information pursuant to subdivision (c) of Section 987,
15 shall be deemed to have waived the confidentiality of that affidavit
16 or financial information as to a victim in whose favor the order of
17 restitution is entered pursuant to subdivision (f). The affidavit or
18 information shall serve in lieu of the financial disclosure required
19 in paragraph (5), and paragraphs (7) to (10), inclusive, shall not
20 apply.

21 (7) Except as provided in paragraph (6), the defendant shall file
22 the disclosure with the clerk of the court no later than the date set
23 for the defendant's sentencing, unless otherwise directed by the
24 court. The disclosure may be inspected or copied as provided by
25 subdivision (b), (c), or (d) of Section 1203.05.

26 (8) In its discretion, the court may relieve the defendant of the
27 duty under paragraph (7) of filing with the clerk by requiring that
28 the defendant's disclosure be submitted as an attachment to, and
29 be available to, those authorized to receive the following:

30 (A) Any report submitted pursuant to subparagraph (C) of
31 paragraph (2) of subdivision (b) of Section 1203 or subdivision (g)
32 of Section 1203.

33 (B) Any stipulation submitted pursuant to paragraph (4) of
34 subdivision (b) of Section 1203.

35 (C) Any report by the probation officer, or any information
36 submitted by the defendant applying for a conditional sentence
37 pursuant to subdivision (d) of Section 1203.

38 (9) The court may consider a defendant's unreasonable failure
39 to make a complete disclosure pursuant to paragraph (5) as any of
40 the following:

1 (A) A circumstance in aggravation of the crime in imposing a
2 term under subdivision (b) of Section 1170.

3 (B) A factor indicating that the interests of justice would not be
4 served by admitting the defendant to probation under Section
5 1203.

6 (C) A factor indicating that the interests of justice would not be
7 served by conditionally sentencing the defendant under Section
8 1203.

9 (D) A factor indicating that the interests of justice would not be
10 served by imposing less than the maximum fine and sentence fixed
11 by law for the case.

12 (10) A defendant's failure or refusal to make the required
13 disclosure pursuant to paragraph (5) shall not delay entry of an
14 order of restitution or pronouncement of sentence. In appropriate
15 cases, the court may do any of the following:

16 (A) Require the defendant to be examined by the district
17 attorney pursuant to subdivision (h).

18 (B) If sentencing the defendant under Section 1170, provide
19 that the victim shall receive a copy of the portion of the probation
20 report filed pursuant to Section 1203.10 concerning the
21 defendant's employment, occupation, finances, and liabilities.

22 (C) If sentencing the defendant under Section 1203, set a date
23 and place for submission of the disclosure required by paragraph
24 (5) as a condition of probation or suspended sentence.

25 (g) The court shall order full restitution unless it finds
26 compelling and extraordinary reasons for not doing so, and states
27 those reasons on the record. A defendant's inability to pay shall not
28 be considered a compelling and extraordinary reason not to impose
29 a restitution order, nor shall inability to pay be a consideration in
30 determining the amount of a restitution order.

31 (h) The district attorney may request an order of examination
32 pursuant to the procedures specified in Article 2 (commencing
33 with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part
34 2 of the Code of Civil Procedure, in order to determine the
35 defendant's financial assets for purposes of collecting on the
36 restitution order.

37 (i) A restitution order imposed pursuant to subdivision (f) shall
38 be enforceable as if the order were a civil judgment.

39 (j) The making of a restitution order pursuant to subdivision (f)
40 shall not affect the right of a victim to recovery from the

1 Restitution Fund as otherwise provided by law, except to the extent
2 that restitution is actually collected pursuant to the order.
3 Restitution collected pursuant to this subdivision shall be credited
4 to any other judgments for the same losses obtained against the
5 defendant arising out of the crime for which the defendant was
6 convicted.

7 (k) For purposes of this section, “victim” shall include all of
8 the following:

9 (1) The immediate surviving family of the actual victim.

10 (2) Any corporation, business trust, estate, trust, partnership,
11 association, joint venture, government, governmental
12 subdivision, agency, or instrumentality, or any other legal or
13 commercial entity when that entity is a direct victim of a crime.

14 (3) “Derivative victims” as defined in Section 13960 of the
15 Government Code.

16 (l) At its discretion, the board of supervisors of any county may
17 impose a fee to cover the actual administrative cost of collecting
18 the restitution fine, not to exceed 10 percent of the amount ordered
19 to be paid, to be added to the restitution fine and included in the
20 order of the court, the proceeds of which shall be deposited in the
21 general fund of the county.

22 (m) In every case in which the defendant is granted probation,
23 the court shall make the payment of restitution fines and orders
24 imposed pursuant to this section a condition of probation. Any
25 portion of a restitution order that remains unsatisfied after a
26 defendant is no longer on probation shall continue to be
27 enforceable by a victim pursuant to Section 1214 until the
28 obligation is satisfied.

29 (n) If the court finds and states on the record compelling and
30 extraordinary reasons why a restitution fine or full restitution order
31 should not be required, the court shall order, as a condition of
32 probation, that the defendant perform specified community
33 service, unless it finds and states on the record compelling and
34 extraordinary reasons not to require community service in addition
35 to the finding that restitution should not be required. Upon
36 revocation of probation, the court shall impose restitution pursuant
37 to this section.

38 (o) The provisions of Section 13966.01 of the Government
39 Code shall apply to restitution imposed pursuant to this section.



~~(p) (1) This section shall become operative on January 1, 2000, except when all of the following apply:~~

~~(A) A majority of judges of a court apply to the Judicial Council for an extension.~~

~~(B) The judicial application described in paragraph (1) documents the need for time to adjust restitution procedures and practices, as well as to facilitate judicial education and training in direct restitution to victims under subdivision (f).~~

~~(C) The Judicial Council grants the extension upon finding good cause.~~

~~(2) Upon the grant of an extension pursuant to the application of a court under this subdivision, the provisions of former Section 1214 shall continue to apply with respect to that court. The extension may be for any period of time set by the Judicial Council, but shall not exceed January 1, 2002, in any case. This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.~~

SEC. 7. Section 1202.4 is added to the Penal Code, to read:

1202.4. (a) (1) It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.

(2) Upon a person being convicted of any crime in the State of California, the court shall order the defendant to pay a fine in the form of a penalty assessment in accordance with Section 1464.

(3) The court, in addition to any other penalty provided or imposed under the law, shall order the defendant to pay both of the following:

(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which shall be enforceable as if the order were a civil judgment.

(b) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.

(1) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not be less than two hundred dollars (\$200), and not more than ten

1 thousand dollars (\$10,000), if the person is convicted of a felony,
2 and shall not be less than one hundred dollars (\$100), and not more
3 than one thousand dollars (\$1,000), if the person is convicted of
4 a misdemeanor.

5 (2) In setting a felony restitution fine, the court may determine
6 the amount of the fine as the product of two hundred dollars (\$200)
7 multiplied by the number of years of imprisonment the defendant
8 is ordered to serve, multiplied by the number of felony counts of
9 which the defendant is convicted.

10 (c) The court shall impose the restitution fine unless it finds
11 compelling and extraordinary reasons for not doing so, and states
12 those reasons on the record. A defendant's inability to pay shall not
13 be considered a compelling and extraordinary reason not to impose
14 a restitution fine. Inability to pay may be considered only in
15 increasing the amount of the restitution fine in excess of the two
16 hundred dollar (\$200) or one hundred dollar (\$100) minimum.

17 (d) In setting the amount of the fine pursuant to subdivision (b)
18 in excess of the two hundred dollar (\$200) or one hundred dollar
19 (\$100) minimum, the court shall consider any relevant factors
20 including, but not limited to, the defendant's inability to pay, the
21 seriousness and gravity of the offense and the circumstances of its
22 commission, any economic gain derived by the defendant as a
23 result of the crime, the extent to which any other person suffered
24 any losses as a result of the crime, and the number of victims
25 involved in the crime. Those losses may include pecuniary losses
26 to the victim or his or her dependents as well as intangible losses,
27 such as psychological harm caused by the crime. Consideration of
28 a defendant's inability to pay may include his or her future earning
29 capacity. A defendant shall bear the burden of demonstrating his
30 or her inability to pay. Express findings by the court as to the
31 factors bearing on the amount of the fine shall not be required. A
32 separate hearing for the fine shall not be required.

33 (e) The restitution fine shall not be subject to penalty
34 assessments as provided in Section 1464, and shall be deposited in
35 the Restitution Fund in the State Treasury.

36 (f) In every case in which a victim has suffered economic loss
37 as a result of the defendant's conduct, the court shall require that
38 the defendant make restitution to the victim or victims in an
39 amount established by court order, based on the amount of loss
40 claimed by the victim or victims or any other showing to the court.

1 If the amount of loss cannot be ascertained at the time of
2 sentencing, the restitution order shall include a provision that the
3 amount shall be determined at the direction of the court. The court
4 shall order full restitution unless it finds compelling and
5 extraordinary reasons for not doing so, and states them on the
6 record.

7 (1) The defendant has the right to a hearing before a judge to
8 dispute the determination of the amount of restitution. The court
9 may modify the amount, on its own motion or on the motion of the
10 district attorney, the victim or victims, or the defendant. If a
11 motion is made for modification of a restitution order, the victim
12 shall be notified of that motion at least 10 days prior to the
13 proceeding held to decide the motion.

14 (2) Determination of the amount of restitution ordered
15 pursuant to this subdivision shall not be affected by the
16 indemnification or subrogation rights of any third party.
17 Restitution ordered pursuant to this subdivision shall be ordered
18 to be deposited to the Restitution Fund to the extent that the victim,
19 as defined in subdivision (k), has received assistance from the
20 Victims of Crime Program pursuant to Chapter 5 (commencing
21 with Section 13950) of Part 4 of Division 3 of Title 2 of the
22 Government Code.

23 (3) To the extent possible, the restitution order shall be
24 prepared by the sentencing court, shall identify each victim and
25 each loss to which it pertains, and shall be of a dollar amount that
26 is sufficient to fully reimburse the victim or victims for every
27 determined economic loss incurred as the result of the defendant's
28 criminal conduct, including, but not limited to, all of the
29 following:

30 (A) Full or partial payment for the value of stolen or damaged
31 property. The value of stolen or damaged property shall be the
32 replacement cost of like property, or the actual cost of repairing the
33 property when repair is possible.

34 (B) Medical expenses.

35 (C) Mental health counseling expenses.

36 (D) Wages or profits lost due to injury incurred by the victim,
37 and if the victim is a minor, wages or profits lost by the minor's
38 parent, parents, guardian, or guardians, while caring for the
39 injured minor. Lost wages shall include any commission income
40 as well as any base wages. Commission income shall be

1 established by evidence of commission income during the
2 12-month period prior to the date of the crime for which restitution
3 is being ordered, unless good cause for a shorter time period is
4 shown.

5 (E) Wages or profits lost by the victim, and if the victim is a
6 minor, wages or profits lost by the minor's parent, parents,
7 guardian, or guardians, due to time spent as a witness or in assisting
8 the police or prosecution. Lost wages shall include any
9 commission income as well as any base wages. Commission
10 income shall be established by evidence of commission income
11 during the 12-month period prior to the date of the crime for which
12 restitution is being ordered, unless good cause for a shorter time
13 period is shown.

14 (F) Noneconomic losses, including, but not limited to,
15 psychological harm, for felony violations of Section 288.

16 (G) Interest, at the rate of 10 percent per annum, that accrues
17 as of the date of sentencing or loss, as determined by the court.

18 (H) Actual and reasonable attorney's fees and other costs of
19 collection accrued by a private entity on behalf of the victim.

20 (I) Expenses incurred by an adult victim in relocating away
21 from the defendant, including, but not limited to, deposits for
22 utilities and telephone service, deposits for rental housing,
23 temporary lodging and food expenses, clothing, and personal
24 items. Expenses incurred pursuant to this section shall be verified
25 by law enforcement to be necessary for the personal safety of the
26 victim or by a mental health treatment provider to be necessary for
27 the emotional well-being of the victim.

28 (J) Expenses to install or increase residential security incurred
29 related to a crime, as defined in subdivision (c) of Section 667.5,
30 including, but not limited to, a home security device or system, or
31 replacing or increasing the number of locks.

32 (K) Expenses to retrofit a residence or vehicle, or both, to make
33 the residence accessible to or the vehicle operational by the victim,
34 if the victim is permanently disabled, whether the disability is
35 partial or total, as a direct result of the crime.

36 (4) (A) If, as a result of the defendant's conduct, the
37 Restitution Fund has provided assistance to or on behalf of a victim
38 or derivative victim pursuant to Chapter 5 (commencing with
39 Section 13950) of Part 4 of Division 3 of Title 2 of the Government
40 Code, the amount of assistance provided shall be presumed to be

1 a direct result of the defendant's criminal conduct and shall be
2 included in the amount of the restitution ordered.

3 (B) The amount of assistance provided by the Restitution Fund
4 shall be established by copies of bills submitted to the California
5 Victim Compensation and Government Claims Board reflecting
6 the amount paid by the board and whether the services for which
7 payment was made were for medical or dental expenses, funeral
8 or burial expenses, mental health counseling, wage or support
9 losses, or rehabilitation. Certified copies of these bills provided by
10 the California Victim Compensation and Government Claims
11 Board and redacted to protect the privacy and safety of the victim
12 or any legal privilege, together with a statement made under
13 penalty of perjury by the custodian of records that those bills were
14 submitted to and were paid by the California Victim Compensation
15 and Government Claims Board, shall be sufficient to meet this
16 requirement.

17 (C) If the defendant offers evidence to rebut the presumption
18 established by this paragraph, the court may release additional
19 information contained in the records of the California Victim
20 Compensation and Government Claims Board to the defendant
21 only after reviewing that information in camera and finding that
22 the information is necessary for the defendant to dispute the
23 amount of the restitution order.

24 (5) Except as provided in paragraph (6), in any case in which
25 an order may be entered pursuant to this subdivision, the defendant
26 shall prepare and file a disclosure identifying all assets, income,
27 and liabilities in which the defendant held or controlled a present
28 or future interest as of the date of the defendant's arrest for the
29 crime for which restitution may be ordered. This disclosure shall
30 be available to the victim pursuant to Section 1214, and any use the
31 court may make of the disclosure shall be subject to the restrictions
32 of subdivision (g). The disclosure shall be signed by the defendant
33 upon a form approved or adopted by the Judicial Council for the
34 purpose of facilitating the disclosure. Any defendant who willfully
35 states as true any material matter that he or she knows to be false
36 on the disclosure required by this subdivision is guilty of a
37 misdemeanor, unless this conduct is punishable as perjury or
38 another provision of law provides for a greater penalty.

39 (6) A defendant who fails to file the financial disclosure
40 required in paragraph (5), but who has filed a financial affidavit or

1 financial information pursuant to subdivision (c) of Section 987,
2 shall be deemed to have waived the confidentiality of that affidavit
3 or financial information as to a victim in whose favor the order of
4 restitution is entered pursuant to subdivision (f). The affidavit or
5 information shall serve in lieu of the financial disclosure required
6 in paragraph (5), and paragraphs (7) to (10), inclusive, shall not
7 apply.

8 (7) Except as provided in paragraph (6), the defendant shall file
9 the disclosure with the clerk of the court no later than the date set
10 for the defendant's sentencing, unless otherwise directed by the
11 court. The disclosure may be inspected or copied as provided by
12 subdivision (b), (c), or (d) of Section 1203.05.

13 (8) In its discretion, the court may relieve the defendant of the
14 duty under paragraph (7) of filing with the clerk by requiring that
15 the defendant's disclosure be submitted as an attachment to, and
16 be available to, those authorized to receive the following:

17 (A) Any report submitted pursuant to subparagraph (C) of
18 paragraph (2) of subdivision (b) of Section 1203 or subdivision (g)
19 of Section 1203.

20 (B) Any stipulation submitted pursuant to paragraph (4) of
21 subdivision (b) of Section 1203.

22 (C) Any report by the probation officer, or any information
23 submitted by the defendant applying for a conditional sentence
24 pursuant to subdivision (d) of Section 1203.

25 (9) The court may consider a defendant's unreasonable failure
26 to make a complete disclosure pursuant to paragraph (5) as any of
27 the following:

28 (A) A circumstance in aggravation of the crime in imposing a
29 term under subdivision (b) of Section 1170.

30 (B) A factor indicating that the interests of justice would not be
31 served by admitting the defendant to probation under Section
32 1203.

33 (C) A factor indicating that the interests of justice would not be
34 served by conditionally sentencing the defendant under Section
35 1203.

36 (D) A factor indicating that the interests of justice would not be
37 served by imposing less than the maximum fine and sentence fixed
38 by law for the case.

39 (10) A defendant's failure or refusal to make the required
40 disclosure pursuant to paragraph (5) shall not delay entry of an

1 order of restitution or pronouncement of sentence. In appropriate
2 cases, the court may do any of the following:

3 (A) Require the defendant to be examined by the district
4 attorney pursuant to subdivision (h).

5 (B) If sentencing the defendant under Section 1170, provide
6 that the victim shall receive a copy of the portion of the probation
7 report filed pursuant to Section 1203.10 concerning the
8 defendant's employment, occupation, finances, and liabilities.

9 (C) If sentencing the defendant under Section 1203, set a date
10 and place for submission of the disclosure required by paragraph
11 (5) as a condition of probation or suspended sentence.

12 (g) The court shall order full restitution unless it finds
13 compelling and extraordinary reasons for not doing so, and states
14 those reasons on the record. A defendant's inability to pay shall not
15 be considered a compelling and extraordinary reason not to impose
16 a restitution order, nor shall inability to pay be a consideration in
17 determining the amount of a restitution order.

18 (h) The district attorney may request an order of examination
19 pursuant to the procedures specified in Article 2 (commencing
20 with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part
21 2 of the Code of Civil Procedure, in order to determine the
22 defendant's financial assets for purposes of collecting on the
23 restitution order.

24 (i) A restitution order imposed pursuant to subdivision (f) shall
25 be enforceable as if the order were a civil judgment.

26 (j) The making of a restitution order pursuant to subdivision (f)
27 shall not affect the right of a victim to recovery from the
28 Restitution Fund as otherwise provided by law, except to the extent
29 that restitution is actually collected pursuant to the order.
30 Restitution collected pursuant to this subdivision shall be credited
31 to any other judgments for the same losses obtained against the
32 defendant arising out of the crime for which the defendant was
33 convicted.

34 (k) For purposes of this section, "victim" shall include all of
35 the following:

36 (1) The immediate surviving family of the actual victim.

37 (2) Any corporation, business trust, estate, trust, partnership,
38 association, joint venture, government, governmental
39 subdivision, agency, or instrumentality, or any other legal or
40 commercial entity when that entity is a direct victim of a crime.

(3) “Derivative victims” as defined in Section 13951 of the Government Code.

(l) At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

(m) In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed pursuant to this section a condition of probation. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

(n) If the court finds and states on the record compelling and extraordinary reasons why a restitution fine or full restitution order should not be required, the court shall order, as a condition of probation, that the defendant perform specified community service, unless it finds and states on the record compelling and extraordinary reasons not to require community service in addition to the finding that restitution should not be required. Upon revocation of probation, the court shall impose restitution pursuant to this section.

(o) The provisions of Section 13963 of the Government Code shall apply to restitution imposed pursuant to this section.

(p) This section shall become operative on January 1, ~~2006~~ 2007.

SEC. 8. Section 2085.5 of the Penal Code is amended to read:

2085.5. (a) In any case in which a prisoner owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) of Section 1202.4, the Director of Corrections shall deduct a minimum of 20 percent or the balance owing on the fine amount, whichever is less, up to a maximum of ~~50~~ 30 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer that amount to the California Victim Compensation and Government Claims Board for deposit in the Restitution Fund in the State Treasury. Any amount so deducted shall be credited against the amount owing on

1 the fine. The sentencing court shall be provided a record of the
2 payments.

3 (b) In any case in which a prisoner owes a restitution order
4 imposed pursuant to subdivision (c) of Section 13967 of the
5 Government Code, as operative prior to September 28, 1994, or
6 subdivision (f) of Section 1202.4, the Director of Corrections shall
7 deduct a minimum of 20 percent or the balance owing on the order
8 amount, whichever is less, up to a maximum of ~~50~~ 30 percent from
9 the wages and trust account deposits of a prisoner, unless
10 prohibited by federal law. If the restitution is owed to a person who
11 has filed an application with the Victims of Crime Program, the
12 director shall transfer that amount to the California Victim
13 Compensation and Government Claims Board for direct payment
14 to the victim, or payment shall be made to the Restitution Fund to
15 the extent that the victim has received assistance pursuant to that
16 program. No deductions shall be made on behalf of victims who
17 have not filed an application with the Victims of Crime Program.
18 The sentencing court shall be provided a record of the payments
19 made to victims and of the payments deposited to the Restitution
20 Fund pursuant to this subdivision.

21 (c) The director shall deduct and retain from the wages and trust
22 account deposits of a prisoner, unless prohibited by federal law, an
23 administrative fee that totals ~~40~~ 5 percent of any amount
24 transferred to the California Victim Compensation and
25 Government Claims Board pursuant to subdivision (a) or (b). The
26 director shall deduct and retain from any prisoner settlement or
27 trial award, an administrative fee that totals 5 percent of any
28 amount paid from the settlement or award to satisfy an outstanding
29 restitution order or fine pursuant to subdivision (j), unless
30 prohibited by federal law. The director shall deposit the
31 administrative fee moneys in a special deposit account for
32 reimbursing administrative and support costs of the restitution
33 program of the Department of Corrections. The director, at his or
34 her discretion, may retain any excess funds in the special deposit
35 account for future reimbursement of the department's
36 administrative and support costs for the restitution program or may
37 transfer all or part of the excess funds for deposit in the Restitution
38 Fund.

39 (d) In any case in which a parolee owes a restitution fine
40 imposed pursuant to subdivision (a) of Section 13967 of the



1 Government Code, as operative prior to September 28, 1994, or
2 subdivision (b) of Section 1202.4, the Director of Corrections may
3 collect from the parolee any moneys owing on the restitution fine
4 amount, unless prohibited by federal law, and shall transfer that
5 amount to the California Victim Compensation and Government
6 Claims Board for deposit in the Restitution Fund in the State
7 Treasury. Any amount so deducted shall be credited against the
8 amount owing on the fine. The sentencing court shall be provided
9 a record of the payments.

10 (e) In any case in which a parolee owes a direct order of
11 restitution, imposed pursuant to subdivision (c) of Section 13967
12 of the Government Code, as operative prior to September 28,
13 1994, or paragraph (3) of subdivision (a) of Section 1202.4, the
14 Director of Corrections may collect from the parolee any moneys
15 owing, unless prohibited by federal law. If the restitution is owed
16 to a person who has filed an application with the Victims of Crime
17 Program, the director shall transfer that amount to the California
18 Victim Compensation and Government Claims Board for direct
19 payment to the victim, or payment shall be made to the Restitution
20 Fund to the extent that the victim has received assistance pursuant
21 to that program. No deductions shall be made on behalf of victims
22 who have not filed an application with the Victims of Crime
23 Program. The sentencing court shall be provided a record of the
24 payments made by the offender pursuant to this subdivision.

25 (f) The director may deduct and retain from any moneys
26 collected from parolees an administrative fee that totals ~~40~~ 5
27 percent of any amount transferred to the California Victim
28 Compensation and Government Claims Board pursuant to
29 subdivision (d) or (e), unless prohibited by federal law. The
30 director shall deduct and retain from any settlement or trial award
31 of a parolee an administrative fee that totals 5 percent of any
32 amount paid from the settlement or award to satisfy an outstanding
33 restitution order or fine pursuant to subdivision (j), unless
34 prohibited by federal law. The director shall deposit the
35 administrative fee moneys in a special deposit account for
36 reimbursing administrative and support costs of the restitution
37 program of the Department of Corrections. The director, at his or
38 her discretion, may retain any excess funds in the special deposit
39 account for future reimbursement of the department's
40 administrative and support costs for the restitution program or may

1 transfer all or part of the excess funds for deposit in the Restitution
2 Fund.

3 (g) When a prisoner has both a restitution fine and a restitution
4 order from the sentencing court, the Department of Corrections
5 shall collect the restitution order first pursuant to subdivision (b).

6 (h) When a parolee has both a restitution fine and order from
7 the sentencing court, the Department of Corrections may collect
8 the restitution order first, pursuant to subdivision (e).

9 (i) If an inmate is housed at an institution that requires food to
10 be purchased from the institution canteen for unsupervised
11 overnight visits, and if the money for the purchase of this food is
12 received from funds other than the inmate's wages, that money
13 shall be exempt from restitution deductions. This exemption shall
14 apply to the actual amount spent on food for the visit up to a
15 maximum of fifty dollars (\$50) for visits that include the inmate
16 and one visitor, seventy dollars (\$70) for visits that include the
17 inmate and two or three visitors, and eighty dollars (\$80) for visits
18 that include the inmate and four or more visitors.

19 (j) Any compensatory or punitive damages awarded by trial or
20 settlement to any inmate or parolee in connection with a civil
21 action brought against any federal, state, or local jail, prison, or
22 correctional facility, or any official or agent thereof, shall be paid
23 directly, after payment of reasonable attorney's fees and litigation
24 costs approved by the court, to satisfy any outstanding restitution
25 orders or restitution fines against that person. The balance of any
26 award shall be forwarded to the payee after full payment of all
27 outstanding restitution orders and restitution fines, subject to
28 subdivisions (c) and (f). The Department of Corrections shall
29 make all reasonable efforts to notify the victims of the crime for
30 which that person was convicted concerning the pending payment
31 of any compensatory or punitive damages.

32 (k) (1) Amounts transferred to the California Victim
33 Compensation and Government Claims Board for payment of
34 direct orders of restitution shall be paid to the victim within 60
35 days from the date the restitution revenues are received by the
36 California Victim Compensation and Government Claims Board.
37 If the restitution payment to a victim is less than fifty dollars (\$50),
38 then payment need not be forwarded to that victim until the
39 payment reaches fifty dollars (\$50) or until 180 days from the date
40 the first payment is received, whichever occurs sooner.

1 (2) In any case in which a victim cannot be located, the
2 restitution revenues received by the California Victim
3 Compensation and Government Claims Board on behalf of the
4 victim shall be held in trust in the Restitution Fund until the end
5 of the state fiscal year subsequent to the state fiscal year in which
6 the funds were deposited or until the time that the victim has
7 provided current address information, whichever occurs sooner.
8 Amounts remaining in trust at the end of the specified period of
9 time shall revert to the Restitution Fund.

10 (3) Any victim failing to provide a current address within the
11 period of time specified in paragraph (2) may provide
12 documentation to the Department of Corrections, which in turn
13 shall verify that moneys were in fact collected on behalf of the
14 victim. Upon receipt of that verified information from the
15 Department of Corrections, the California Victim Compensation
16 and Government Claims Board shall transmit the restitution
17 revenues to the victim in accordance with the provisions of
18 subdivision (b).

19 SEC. 9. The Administrative Office of the Courts shall
20 establish a workgroup to review the current policies and processes
21 by which criminal fines and penalties are imposed by the courts,
22 including a review of how restitution fines and orders are imposed
23 and collected ~~by the courts~~.

24 (b) The workgroup shall do all of the following:

25 (1) Evaluate the cumulative and marginal impact of statutorily
26 imposed restitution fines on the collection of the fines and the
27 offender's actual ability to pay.

28 (2) Evaluate the imposition of other fines and penalties and
29 how all of those fines and penalties interact and affect the
30 collection of the total imposed.

31 (3) Develop recommendations that are intended to improve the
32 effectiveness of the collection of fines for the victims of crime
33 program and increased collections for that program as well as the
34 other fines and penalties imposed on offenders.

35 (4) Consider the impact of increased imposition of fines and
36 penalties as an option to fund state programs.

37 (c) The workgroup shall be chaired by the Director of the
38 Administrative Office of the Courts or his or her designee. The
39 workgroup shall be composed of representatives of the courts,
40 probation department, Department of Corrections, the California

1 Youth Authority, the California Victim Compensation and Claims
2 Board, *Department of Finance, the Attorney General*, groups
3 representing victims of crimes and offender families, public
4 defenders, district attorneys, the Commission on Peace Officer
5 Standards and Training, local governments, the Legislative
6 Analyst, and other groups as determined by the chairperson.

7 (d) The workgroup shall report its findings and
8 recommendations to the Legislature no later than February 1,
9 2004.

10 SEC. 10. This act is an urgency statute necessary for the
11 immediate preservation of the public peace, health, or safety
12 within the meaning of Article IV of the Constitution and shall go
13 into immediate effect. The facts constituting the necessity are:

14 In order that the changes made by this act to the Victims
15 Compensation Program may take effect, the diversion restitution
16 fees imposed on criminal defendants may be increased, and a
17 workgroup be established to review the policies and processes by
18 which criminal fines and penalties are imposed may take effect, at
19 the earliest possible time, it is necessary for this act to take effect
20 immediately as an urgency statute.

